

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Comcast Cable Communications, LLC, on behalf )
of its subsidiaries and affiliates ) CSR 7747-E, CSR 7748-E, CSR 7749-E,
) CSR 7750-E, CSR 7751-E, CSR 7752-E &
) CSR 7754-E
Petition for Determination of Effective )
Competition in Various Kentucky and Tennessee )
Communities )

MEMORANDUM OPINION AND ORDER

Adopted: May 1, 2008

Released: May 2, 2008

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates ("Comcast"), hereinafter referred to as "Petitioner," has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission's rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as "Communities." Petitioner alleges that its cable system serving the Communities is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended ("Communications Act") and the Commission's implementing rules, and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. ("DirecTV") and Dish Network ("Dish"). Petitioner alternatively claims to be exempt from cable rate regulation in the Communities listed on Attachment B because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition, as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission's rules. The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area. For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachments (A and B).

1See 47 U.S.C. § 543(a)(1).
247 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).
3 Dish is a registered trademark of EchoStar Communications Corporation.
447 C.F.R. § 76.906.
5See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.
6See 47 C.F.R. §§ 76.906 & 907.

## II. DISCUSSION

### A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;<sup>7</sup> this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.<sup>8</sup>

5. Turning to the first prong of this test, it is undisputed that these Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.<sup>9</sup> The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.<sup>10</sup> We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Communities to support their assertion that potential customers in the Communities are reasonably aware that they may purchase the service of these MVPD providers.<sup>11</sup> The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming<sup>12</sup> and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.<sup>13</sup> Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Communities because of their national satellite footprint.<sup>14</sup> Accordingly, we find that the first prong of the competing provider test is satisfied.

---

<sup>7</sup>47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>8</sup>47 C.F.R. § 76.905(b)(2)(i).

<sup>9</sup>*See* Petition CSR 7747-E at 3-4; Petition CSR 7748-E at 3-4; Petition CSR 7749-E at 3-4; Petition CSR 7750-E at 3-4; Petition CSR 7751-E at 3-4; Petition CSR 7752-E at 3-4; Petition CSR 7754-E at 3-4.

<sup>10</sup>*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

<sup>11</sup>47 C.F.R. § 76.905(e)(2).

<sup>12</sup>*See* 47 C.F.R. § 76.905(g). *See also* Petition CSR 7747-E at 4-5; Petition CSR 7748-E at 4-5; Petition CSR 7749-E at 4; Petition CSR 7750-E at 4; Petition CSR 7751-E at 4-5; Petition CSR 7752-E at 4-5; Petition CSR 7754-E at 4-5.

<sup>13</sup>*See* Petition CSR 7747-E at 4-5; Petition CSR 7748-E at 4-5 and Exhibits 2 and 3; Petition CSR 7749-E at 4-5 and Exhibits 2 and 3; Petition CSR 7750-E at 4-5 and Exhibits 2 and 3; Petition CSR 7751-E at 4-5 and Exhibits 2 and 3; Petition CSR 7754-E at 4-5 and Exhibits 2 and 3.

<sup>14</sup>*See* Petition CSR 7747-E at 3; Petition CSR 7748-E at 3; Petition CSR 7749-E at 3; Petition CSR 7750-E at 3; Petition CSR 7751-E at 3; Petition CSR 7754-E at 3.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Communities.<sup>15</sup> Petitioner sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code plus four basis.<sup>16</sup>

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,<sup>17</sup> as reflected in Attachment A, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Communities listed on Attachment A.

### **B. The Low Penetration Test**

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.<sup>18</sup> Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment B, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Communities listed on Attachment B. Therefore, the low penetration test is also satisfied as to the Communities.

---

<sup>15</sup>*Id.* Comcast is unable to determine which MVPD is the largest in the Communities of Clarkson City, Kentucky, Larue County, Kentucky, Muhlenberg County, Kentucky, and Taylor County, Kentucky, because the DBS subscribership data obtained from SBCA is aggregated and does not break down the individual subscribership of each DBS provider. Nevertheless, Comcast argues that it is subject to effective competition because in addition to DBS penetration exceeding 15 percent of the occupied households, the number of Comcast subscribers also exceed 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied.

<sup>16</sup>Petition CSR 7747-E at 6-8; Petition CSR 7748-E at 6-8; Petition CSR 7749-E at 6-8; Petition CSR 7750-E at 6-8; Petition CSR 7751-E at 6-8; Petition CSR 7754-E at 6-8.

<sup>17</sup>Petition CSR 7747-E at 8 and Exhibit 7; Petition CSR 7748-E at 8 and Exhibit 7; Petition CSR 7749-E at 8 and Exhibit 7; CSR 7750-E at 8 and Exhibit 7; Petition CSR 7751-E at 8 and Exhibit 7; Petition CSR 7754-E at 8 and Exhibit 7.

<sup>18</sup>47 U.S.C. § 543(l)(1)(A).

**III. ORDERING CLAUSES**

11. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates **ARE GRANTED**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>19</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Senior Deputy Chief, Policy Division, Media Bureau

---

<sup>19</sup>47 C.F.R. § 0.283.

## ATTACHMENT A

CSRs 7747-E, 7748-E, 7749-E, 7750-E, 7751-E &amp; 7754-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC, ON BEHALF  
OF ITS SUBSIDIARIES AND AFFILIATES

## CSR 7747-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Cave City	KY0013	17.06%	844	144**
Hiseville	KY1208	17.02%	94	16**
Horse Cave	KY0112	17.09%	977	167**

## CSR 7748-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Campbellsville City	KY0114	44.91%	4432	1902
Taylor County	KY0751	45.15%	4801	2168

## CSR 7749-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Greenville City	KY0116	39.70%	1859	738
Central City	KY0117	35.88%	2065	741
Powderly City	KY0118	25.73%	342	88
Drakesboro City	KY0333	43.32%	247	107
South Carrollton City	KY0334	37.14%	70	26
Muhlenberg County	KY0731	44.26%	7610	3368

## CSR 7750-E

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Household</b>	<b>Estimated DBS Subscribers</b>
Leitchfield City	KY0110	51.75%	2485	1286
Clarkson City	KY0643	69.41%	353	245

## CSR 7751-E

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Household</b>	<b>Estimated DBS Subscribers</b>
Elizabethtown City	KY0107	18.54%	9306	1725
Hodgenville City	KY0115	37.65%	1235	465
Hardin County	KY0640	30.37%	14348	4358
Vine Grove City	KY0642	40.21%	1619	651
LaRue County	KY0750	33.50%	3917	1312

## CSR 7754-E

<b>Communities</b>	<b>CUID</b>	<b>CPR*</b>	<b>2000 Census Household</b>	<b>Estimated DBS Subscribers</b>
Livingston Town	TN0060	42.51%	1543	656

\*CPR = Percent of competitive DBS penetration rate.

\*\*Combined DBS/South Central Rural Telephone penetration rate. (Comcast combines the DBS and South Central Rural Telephone subscribers to establish that MVPDs other than the largest MVPD satisfies the 15 percent penetration rate required under the competing provider test).

## ATTACHMENT B

## CSRs 7749-E, 7751-E &amp; 7752-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC, ON BEHALF  
OF ITS SUBSIDIARIES AND AFFILIATES

## CSR 7749-E

<b>Communities</b>	<b>CUID</b>	<b>Franchise Area Households</b>	<b>Cable Subscribers</b>	<b>Penetration Percentage</b>
Muhlenberg County	KY0731	7610	1691	22.22%

## CSR 7751-E

<b>Communities</b>	<b>CUID</b>	<b>Franchise Area Households</b>	<b>Cable Subscribers</b>	<b>Penetration Percentage</b>
LaRue County	KY0750	3917	740	18.89%

## CSR 7752-E

<b>Communities</b>	<b>CUID</b>	<b>Franchise Area Households</b>	<b>Cable Subscribers</b>	<b>Penetration Percentage</b>
Radcliff City	KY0396	8487	36	0.42%